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No. 92-1988

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

TICOR TITLE INSURANCE COMPANY, *et al.*,
Petitioners,
v.
WALTER THOMAS BROWN and JEFFREY L. DZIEWIT,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Respondents were members of the class in MDL 633, which the district court certified, after full and careful consideration, as a mandatory class action under Rule 23(b)(1) and (b)(2). The judgment in that case explicitly dismissed with prejudice the claims that respondents then brought in the present suit. Pet. App. 76a-77a. Nevertheless, the Ninth Circuit permitted the relitigation of those claims, holding that respondents could not constitutionally be bound by the MDL 633 judgment because the due process clause of the Fifth Amendment entitles persons with monetary claims to opt out of a class action

(*id.* at 11a-12a), even where, as here, they were adequately represented in that action (*id.* at 8a-11a). In so holding, the Ninth Circuit cast aside this Court's repeated pronouncements that absent class members may constitutionally be bound if adequately represented (*e.g., Martin v. Wilks*, 490 U.S. 755, 762 n.2 (1989); *Cooper v. Federal Reserve Bank*, 467 U.S. 867, 874 (1984); *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940); *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 367 (1921)) based entirely on its belief that this Court had altered that principle in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985). Pet. App. 11a-12a.

As our opening brief explains, that ruling, which would seriously impair federal-court efforts at fair and efficient management of class litigation, does not follow from *Shutts* and is insupportable under either the personal jurisdiction or procedural fairness components of due process doctrine. Respondents and their *amici* have offered nothing to undermine those showings. In particular, respondents make no argument at all based on personal jurisdiction, instead defending the proposition that due process requires opt-out rights even for class members resident in the State, or particular district, where the federal court sits. And as to that proposition, neither respondents nor their *amici* offer any sound reason why, even though respondents' rights were found to have been adequately represented in the class action, the Constitution still entitles each of them to file separate suits to litigate the very same claims, simply because the claims are for money.

1. Respondents first seek to avoid the question on which certiorari was granted—the due process issue—by arguing that normal *res judicata* principles by themselves entitle them to litigate their damages claims, because those "claims could not have been asserted" in the MDL 633 case. Resp. Br. 12; *id.* at 8-12. This Court, however, ordinarily decides the question that it deemed important enough to warrant a grant of certiorari. Moreover, the Court ordinarily does *not* entertain a claim that was not

even presented to (much less decided by) the court of appeals—which, as the Ninth Circuit's exclusive focus on due process confirms, respondents' present *res judicata* contention was not. *See, e.g.*, S. Ct. Rule 14.1(a); *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 551 n.3 (1990); *FTC v. Grolier Inc.*, 462 U.S. 19, 23 n.6 (1983); *Jenkins v. Anderson*, 447 U.S. 231, 234 n.1 (1980).[1]

In any event, the argument is patently meritless. It is not possible to say that respondents' claims for damages could not have been asserted in MDL 633 when those claims *were* in fact asserted there, as respondents acknowledge (Resp. Br. 2 (describing damages claims in MDL 633)), and were explicitly understood to be covered by the judgment dismissing *all* claims (Pet. App. 75a-76a; *see, e.g., id.* at 49a, 56a, 64a). The Ninth Circuit and the Third Circuit recognized that fact. *See* Pet. App. 12a. That the judgment did not provide for the substantial damages sought by the class in MDL 633 hardly changes the fact that such damages were sought and compromised in the litigation—a settlement the district court found eminently reasonable, after "extensive discovery," in light of "counsels' reasonable reassessment of the strength of the case after the decision in *Southern Motor Carriers* [*Rate Conference, Inc. v. United States*, 471 U.S. 48 (1985)]" and "other substantial obstacles" to recovery by plaintiffs. Pet. App. 59a, 56a, 62a. *See id.* at 64a (the class faced "overwhelming risks . . . in achieving any benefits through litigation").

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[1] Respondents' opening brief in the Ninth Circuit argued, on the *res judicata* point, only inadequacy of representation (Br. 15-23) and deprivation of due process (*id.* at 25-29). The brief contains no reference to their present argument (or to the key authorities on which they now rely, Resp. Br. 11-12). Respondents' reply brief in the Ninth Circuit likewise did not present any such argument (or cite their present authorities), instead relying entirely on *Shutts* and due process (Reply Br. 2-5) and the alleged inadequacy of representation (*id.* at 5-11).

Accordingly, the present case is entirely different from the cases relied on by respondents. Resp. Br. 11-12. Those decisions, like *Cooper v. Federal Reserve Bank*, 467 U.S. 867 (1984), hold that the bringing of a class action presenting only class-wide claims (notably, those seeking injunctions against class-wide wrongs) do not preclude the later bringing of individual claims based on individual wrongs (notably, those seeking individualized damages)—because the class claimants are concededly *not* representing the individual claims.[2] Here, the MDL 633 class action explicitly presented, and settled, the very damages claims, based on conduct common to class members, that respondents now seek to present again to the courts. Respondents' non-constitutional *res judicata* argument thus furnishes no ground for avoiding the due process issue presented by the petition.

The issue likewise cannot be avoided by questioning the propriety of the class certification in MDL 633 under Rule 23(b)(1) and (b)(2). Respondents do not in fact raise any such challenge in this Court; nor could they, because they presented no such argument to the court of appeals, which itself did not question the MDL 633 certification.[3] There was good reason, moreover, for the

[2] For example, in *Jones-Bey v. Caso*, 535 F.2d 1360 (2d Cir. 1976), respondents' principal authority (Resp. Br. 11), the court explained that the individual damages claims of the plaintiffs (pre-trial detainees) were not foreclosed by an earlier consent judgment because "[t]he consent agreement did not, by its terms or otherwise, dispose of those claims, and indeed, the class representatives in [the class action] never sought to represent pre-trial detainees pressing individual damage claims in separate actions." *Id.* at 1362.

[3] Respondents in this Court note that they are not taking issue with the MDL 633 certification. *See, e.g.*, Resp. Br. 8 ("Whether right or wrong, [the MDL 633 certification of a mandatory class] has become final and is not before this Court for review or modification."); *id.* at 12 (this case does not "require this Court to decide the propriety of the MDL 633 Court's decisions regarding the administration of the class action before it"). And, as noted above (note 1, *supra*), in the Ninth Circuit respondents raised only

absence of any non-constitutional issue in the courts below: once any due process concerns with the giving of binding effect to a class action judgment are satisfied—the precise issue presented for decision here—the strong finality policies behind the federal law of *res judicata* preclude a collateral attack on a fully considered certification decision raising non-constitutional Rule-based grounds alone, particularly by persons whose interests were vigorously represented on that very issue in the class action, as respondents' were in MDL 633. *See* Pet. App. 43a-53a. In any event, the MDL 633 certification decision in this case—affirmed by the Third Circuit, 815 F.2d 695 (1987), *cert. denied*, 485 U.S. 909 (1988)—was entirely proper, given the appropriateness of primarily injunctive relief for the pricing practices challenged "on grounds generally applicable to the class" (Rule 23(b)(2)) and the risk of "incompatible standards" in the restructuring of petitioners' activities before rating bureaus (Rule 23(b)(1)(A)). *See* Pet. App. 47a-53a. In short, the due process issue decided by the Ninth Circuit is the only issue properly presented for decision in this Court.[4]

2. When respondents face the due process question, they begin their defense of the Ninth Circuit decision by briefly asserting that the opt-out holding of *Shutts* is really about procedural fairness rather than personal jurisdiction. Resp. Br. 13-14. At the outset, however, it is noteworthy

inadequacy of representation and a *Shutts* due process argument as grounds for reversing the district court's judgment giving binding effect to the MDL 633 judgment.

[4] *Amicus* Public Citizen attempts to challenge the MDL 633 class certification as wrong under the standards of Rule 23 (Br. 10-19), but this Court does "not ordinarily address issues raised only by *amici*." *Kamen v. Kemper Fin. Servs., Inc.*, 111 S. Ct. 1711, 1716 n.4 (1991). There is no basis for making an exception for this fact-specific issue here. In addition to the reasons given in text, we note that in all of the cases cited by Public Citizen (Br. 10), the non-constitutional issues were properly raised in the lower court.

that this reading of *Shutts* is a marked departure from respondents' own prior acknowledgement of what *Shutts* held. In the Ninth Circuit, respondents expressly stated that their opt-out argument "only applies with regard to class members from outside the forum state, over whom the court has no personal jurisdiction other than through the effect of class certification. Where personal jurisdiction is otherwise properly asserted by the court, the Supreme Court's holding in *Shutts* is irrelevant." Ct. App. Reply Br. 4.

Respondents' current interpretation of *Shutts* is also wrong. Indeed, their earlier view—that *Shutts* is concerned only with personal jurisdiction and does not establish procedural fairness rights of class plaintiffs within a court's undisputed jurisdiction—is confirmed by simply reading *Shutts*. Not only does the opinion in *Shutts* nowhere engage in a procedural fairness analysis of the sort that respondents themselves now argue is called for—looking to history, established practice, and the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976) (Resp. Br. 18-20)—but it announces at every step that the issue being decided is one of personal jurisdiction over out-of-state class members. It does so repeatedly in defining the arguments presented to the Court.[5] It does so

[5] *See, e.g., Shutts*, 472 U.S. at 799 ("[w]e reject petitioner's jurisdictional claim"); *id.* at 802 (petitioner's claim in lower court "that the Kansas trial court did not possess personal jurisdiction over absent plaintiff class members as required by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and similar cases"); *id.* at 803 (Kansas Supreme Court held that, with notice, opportunity to be heard, opt-out right, and adequate representation, "Kansas could assert jurisdiction over the plaintiff class"); *id.* at 806 ("Reduced to its essentials, petitioner's argument is that unless out-of-state plaintiffs affirmatively consent, the Kansas courts may not exert jurisdiction over their claims. . . . Since Kansas had no prelitigation contact with many of the plaintiffs and leases involved, petitioner claims that Kansas has exceeded its jurisdictional reach and thereby violated the due process rights of the absent plaintiffs."); *id.* at 806-08 (recounting personal jurisdiction principles

again in stating its holding, including the opt-out holding on which the Ninth Circuit relied (Pet. App. 12a, quoting *Shutts*, 472 U.S. at 812): the opinion expressly says that it is setting forth the due-process conditions under which "a forum State may exercise jurisdiction over the claim of an absent class-action plaintiff, even though the plaintiff may not possess the minimum contacts with the forum which would support personal jurisdiction over a defendant" (*id.* at 811).[6] The opinion then immediately confirms that the reason for the opt-out requirement in this context is that it furnishes effective consent to jurisdiction: "[a]ny plaintiff may consent to jurisdiction"; "[t]he essential question, then, is how stringent the requirement for a showing of consent will be." *Id.* at 812. Finally, the opinion reiterates the focus on jurisdiction in concluding its discussion of the issue: "We conclude that the Kansas court properly asserted personal jurisdiction over the absent plaintiffs and their claims against petitioner." *Id.* at 814. In short, the *Shutts* decision cannot be read as resolving the procedural-fairness due-process rights of class plaintiffs as to whom there is uncontested personal jurisdiction.

As their unsuccessful effort to transform *Shutts* confirms, respondents have abandoned any argument that the MDL 633 court constitutionally could not assert personal jurisdiction over them without providing an op-

of *International Shoe* and successor cases, then describing petitioner's argument that "Kansas should not be able to exert jurisdiction over the plaintiff's claims" absent minimum contacts).

[6] The Court specifically introduced the enumeration of due-process rights in which the opt-out holding appears by stating that "absent plaintiffs as well as absent defendants are entitled to some protection from the *jurisdiction* of a forum State which seeks to adjudicate their claims." 472 U.S. at 811 (emphasis added). *See ibid.* (petitioner's personal jurisdiction argument rejected because a class-action plaintiff is subject to fewer burdens, and gets greater protections, than out-of-state defendants, so that "the Due Process Clause need not and does not afford [class plaintiffs] as much protection from state-court jurisdiction as it does [defendants in non-class suits]").

portunity to opt out. *See also* Br. in Opp. 8. One of respondents' *amici* attempts such an argument, but the attempt consists of a single paragraph that summarily invokes the idea of federalism as well as the notion, supposedly based in Fed. R. Civ. P. 4, that statutory authorization is required to extend personal jurisdiction to out-of-state class members. Owens-Illinois *Amicus* Br. 4-5. For reasons already explained, however, this argument is wrong. It is inherent in the sovereignty of the United States under our federalist system that, regardless of the basis for subject matter jurisdiction, the personal jurisdiction of courts of the United States can extend throughout the United States. *See* Pet. Br. 12-15.[7] Moreover, the constitutionality of nationwide personal jurisdiction over class plaintiffs, the issue here, is unaffected by the provisions of *Rule 4* governing *service of process* on *defendants*. And, in any event, Rule 23 and the multidistrict litigation statute, 28 U.S.C. § 1407, provide ample authority for the exercise of multistate jurisdiction here. *See* Pet. Br. 13 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). There was, therefore, no constitutional defect in the MDL 633 court's personal jurisdiction over respondents.

3. Respondents finally attempt, independently of *Shutts*, to defend the view that the presence of monetary claims triggers a due process right to opt out for any unnamed class members, including those indisputably within a federal district court's jurisdiction and adequately represented in that proceeding. Resp. Br. 14-20. This Court, however, has repeatedly recognized that class actions come within the longstanding principle that a judgment is binding on "a person [who], although not a party, has his interests adequately represented by someone with the

[7] The reference of Owens-Illinois to diversity cases (Br. 4), aside from confusing subject matter with personal jurisdiction, is peculiarly inapt in a case, like this one, raising a federal claim—indeed, a claim under a federal statute that specifically provides for nationwide service against defendants. *See* 15 U.S.C. § 22.

same interests who is a party." *Martin v. Wilks*, 490 U.S. at 762 n.2; *see Hansberry v. Lee*, 311 U.S. at 42-43 ("[T]his Court is justified in saying that there has been a failure of due process only in those cases where it cannot be said that the procedure adopted, fairly insures the protection of the interests of absent parties who are to be bound by it. . . . It is a familiar doctrine of the federal courts that members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present . . . .") (citations omitted). Neither respondents nor their *amici* offer any sound reason why that principle cannot constitutionally justify a mandatory class action, like MDL 633, simply because it involves monetary claims.[8]

As an initial matter, both history and established practice recognize that mandatory class actions *can* constitutionally include monetary claims. This Court's earliest decisions approving mandatory class actions involved such claims. *See, e.g., Supreme Tribe of Ben-Hur v. Cauble, supra*; *Smith v. Swormstedt*, 57 U.S. (16 How.) 288 (1854). Likewise, the terms of Rule 23(b)(1) and (b)(2) at present permit, and have frequently been invoked to authorize, mandatory class actions that involve substantial monetary claims, *e.g.*, where inconsistent duties otherwise would arise, where a limited fund is present, or where substantial back pay is awarded. *See, e.g.*, Pet. Br. 20-21; *Amicus* Br. for Lawyers' Committee for Civil Rights Under Law; *Amicus* Br. for Amer. Insur.

[8] Rule 23, of course, currently provides for a right to opt out in certain types of class actions, and respondents rely extensively on lower court decisions addressing the proper classification of particular cases under that Rule. *See* Resp. Br. 15-18. The present case, however, concerns the requirements of the Constitution, not Rule 23. As this Court specifically observed in *Hansberry*, the Constitution does not "compel the adoption of the particular rules thought by this court to be appropriate for the federal courts." 311 U.S. at 42.

Ass'n, *et al.* Notably, respondents do not challenge the validity of mandatory class actions in such cases.[9]

This case, however, is such a case. The MDL 633 class was certified under Rule 23(b)(1) and Rule 23(b)(2), after explicit consideration of the presence of substantial monetary claims. And, as previously noted, neither respondents nor the courts below have taken issue with the propriety of the MDL 633 class certification under those provisions. Acceptance of that certification, together with acceptance of the validity of mandatory class actions under (b)(1) and (b)(2), is sufficient to dispose of respondents' due process challenge.

More broadly, respondents' position confirms that the presence of monetary claims cannot raise a constitutional bar to a binding class action: once all class members' interests are adequately represented, there is no basis in due process analysis for the constitutional distinction between monetary and non-monetary claims made by the Ninth Circuit. As our opening brief explains (Pet. Br. 21-30), class members with monetary claims have no greater practical interest than class members with non-monetary claims in controlling the litigation of their claims, once they are ensured adequate representation of those claims by the named plaintiffs and their counsel. Indeed, any interest in individual control is hard to accord much weight in a case, like this one, where the separate suit is itself a class action. Opt-out rights, moreover, would add nothing appreciable to the likelihood of an accurate adjudication, and certainly no more in monetary cases than in non-monetary cases: that interest is fully protected by the guarantee of adequate representation (Rule 23(a)(4)), enforced initially by the class-action

[9] Neither respondents nor their *amici* assert that there is any substantial authority among the lower courts holding that opt-out rights are *constitutionally* required—as opposed to appropriate in the exercise of judicial discretion in certain circumstances—in class actions certified under (b)(1) or (b)(2). *See, e.g.*, Resp. Br. 15-18; ATLA *Amicus* Br. 15-19. *But see, e.g., DeGier v. McDonald's Corp.*, 76 F.R.D. 125 (N.D. Cal. 1977).

court and then again in any collateral attack on the judgment.[10] On the other side of the balance, by contrast, lie weighty systemic interests in fairness, consistency, and efficiency—in avoiding, *e.g.*, court-clogging repetitious litigation, inconsistent results on identical issues, deprivation of other litigants' opportunity for prompt adjudication or meaningful relief, and deterrence to settlements. These interests are more than sufficient as a constitutional matter, in monetary no less than non-monetary cases, to justify binding all plaintiff class members through a class action where, as here, their interests have been found adequately represented.

In contending otherwise, respondents first make a brief reference to the Seventh Amendment as a basis for special treatment of damages claims. Resp. Br. 15. But they do not assert that all damages claims require opt-out rights for that reason, and they never say what category of monetary claims supposedly triggers such rights. Indeed, respondents nowhere explain why the Seventh Amendment is relevant at all to the due process question presented here. Certification of a mandatory class action requires no sacrifice of Seventh Amendment rights: nothing in Rule 23 precludes giving full protection to such rights (or any other constitutional rights) even in a mandatory class action. *See* Fed. R. Civ. P. 38(a); *Ross v. Bernard*, 396 U.S. 531, 539-42 (1970). Claims covered

[10] Class members are also provided the closely related guarantees that the class action involve claims common to the class and that the named plaintiffs have claims typical of the class (Rule 23(a)(2), (a)(3)) as well as various other protections of their interests, including notice as appropriate (Rule 23(d)(2)) and the assurance of court approval of any settlement, after notice and a hearing, as "fair, adequate, and reasonable" (Rule 23(e)). There is no argument in this case that respondents were deprived of any of these guarantees. In particular, respondents have not disputed the adequacy of notice. Accordingly, the reliance by *amicus* Association of Trial Lawyers of America (Br. 4-5) on the constitutional and Rule-based notice holdings of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974), is misplaced. *See* Pet. Br. 25 nn.13, 14.

by the jury-trial right could easily involve a "limited fund" or otherwise come within the standards of Rule 23 (b)(1) or (b)(2), the validity of which is not challenged by respondents.[11] And there is no apparent basis in logic for supposing that adequate representation is any less a guarantee of fundamental fairness for monetary claims at law (generally covered by the Seventh Amendment) than for monetary claims in equity (generally not). In short, the law-equity distinction among types of monetary claims, vital for Seventh Amendment purposes, has no evident relevance to the present question.

Turning then to the constitutional balance of interests under *Mathews v. Eldridge, supra,* respondents and their *amici* make essentially two arguments for special treatment of (some) monetary claims. First, they suggest that monetary claims may have a lower "degree of homogeneity" than other claims, making a mandatory class action less likely to protect class members' interests. Resp. Br. 16; *id.* at 15-18. Second, they suggest that monetary claims are less "inherently cohesive" than non-monetary claims, making the justification for mandatory class actions involving monetary claims weaker. *Id.* at 15. These assertions, however, cannot support respondents' due process argument.

One problem, applicable to both generalizations, is that the extent to which they are accurate is unclear. Respondents themselves recognize that monetary claims *can* be both homogeneous and cohesive in a large class of cases: even they make their points as matters of "degree" only; and in accepting mandatory class actions under (b)(1) and (b)(2)—the provisions under which the class action at issue in this case was certified—they presumably find homogeneity and cohesiveness constitutionally sufficient in those circumstances. Yet respondents do not identify what the constitutional minimum is for these two concepts, or suggest how much more likely monetary claims are to

[11] *See, e.g., Bower v. Bunker Hill Co.,* 114 F.R.D. 587 (E.D. Wash. 1986); *In re Greenman Sec. Litig.,* 94 F.R.D. 273 (S.D. Fla. 1982).

meet such a minimum; the concepts themselves are far from precisely defined. Premises as uncertain in their validity and ill-defined in their scope as respondents' generalizations are not a firm foundation for a categorical constitutional rule of the sort adopted by the Ninth Circuit.

In any event, respondents' due process claims must fail even if respondents' broad-brush distinctions between monetary and non-monetary claims are accepted as roughly accurate. The question, of course, is not whether there is a rational basis for the distinctions currently embodied in Rule 23 between different types of class actions, some with opt-out rights, others without. The question is whether the presence of substantial monetary claims so alters the balance of interests as to raise a *constitutional* bar to mandatory class actions in some or all cases. Neither of respondents' arguments can justify such a constitutional rule.

With respect to respondents' "homogeneity" argument, the simple reason that it cannot justify opt-out rights for monetary claims is that the concern about homogeneity is fully addressed by the conceded requirement of adequacy of representation (along with the related requirements of commonality and typicality of claims). If monetary cases present a greater likelihood of divergence among the interests of class members, that only means that adequacy of representation is less likely to be found; and in such a case, the requirements for giving binding effect to a class action judgment will be lacking. But where adequacy of representation *is* found—as it was in this case—the concern about intra-class conflicts has necessarily been met, and there is no justification for holding that the Constitution precludes giving binding effect to the class-action judgment.

In other words, the requirement of adequate representation (with the related requirements of commonality and typicality) fully meets any constitutional concerns about heterogeneity among class members' interests. Opt-out

rights are wholly unnecessary to address such concerns, either for monetary or for non-monetary claims. With adequate representation assured, absent class members in a mandatory class action, regardless of the nature of their claims, have "the functional equivalent of a day in court." 7B C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1786, at 195 (2d ed. 1986).[12]

With respect to respondents' "cohesion" argument, the reason that it cannot justify opt-out rights for monetary claims is that the *Constitution* does not demand so narrow a view of the interests that may be deemed to justify mandatory class actions. Respondents evidently assume that the current provisions of Rule 23, which are themselves the result of repeated evolution as circumstances have revealed new needs, must be rigidly construed and then frozen in place to meet the "fundamental fairness" standard of the Constitution's due process guarantee. *See Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 320 (1985). But that assumption is groundless.

To the contrary, once adequate representation assures full protection of the interest of class members in the fair litigation of their claims, there is little if any benefit furnished by opt-out rights (even for monetary claims). On the other hand, there are weighty public and private

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[12] Public Citizen's *amicus* brief offers stark confirmation that it is adequacy of representation that is the real locus of inquiry into intra-class differences. Public Citizen bases both its argument that the class certification was improper (Br. 10-19) and its argument that the interests of respondents went unprotected (Br. 19-29) on the contention that respondents' interests conflicted with those of the named plaintiffs in MDL 633—that is, were not adequately represented. Indeed, Public Citizen ultimately acknowledges that it is really challenging the Ninth Circuit's finding of adequate representation. *Id.* at 25 n.8. That ruling is not challenged by respondents, however, and is not at issue in this Court. Once the finding of adequate representation is accepted, as it must be, there is nothing left to the notion that an opt-out right was constitutionally required to ensure fair treatment of respondents' claims in MDL 633.

interests supporting mandatory classes, independent of whether the class claims are "inherently cohesive" in some strictly defined sense. Both the judicial system and private litigants—defendants as well as other plaintiffs seeking prompt and fair adjudication in the courts—have strong interests in avoiding the wasteful proliferation of duplicative proceedings, with potentially inconsistent results, and unwarranted barriers to settlement. As a constitutional matter, those overriding interests are more than sufficient to justify binding an adequately represented class member to a class action judgment.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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